



JOHN ENGLER, Governor

DEPARTMENT OF ENVIRONMENTAL QUALITY*"Better Service for a Better Environment"*

HOLLISTER BUILDING, PO BOX 30473, LANSING MI 48909-7973

INTERNET: www.deq.state.mi.us

RUSSELL J. HARDING, Director

REPLY TO:

ENVIRONMENTAL RESPONSE DIVISION
KNAPPS CENTRE
PO BOX 30428
LANSING MI 48909-7926

April 8, 1999

US EPA RECORDS CENTER REGION 5



470011

Mr. Philip M. Moilanen
Bullen, Moilanen, Klaasen & Swan, P.C.
402 South Brown Street
Jackson, MI 49203-1485

Dear Mr. Moilanen:

Enclosed, please find one signed copy of the Environmental Protection Easement and Declaration of Restrictive Covenants for three parcels of land owned by CDC Associates.

At the request of CDC Associates and the United States Environmental Protection Agency (EPA), the Department of Environmental Quality (DEQ) is providing this signed easement to facilitate implementation of the remedy selected in the Record of Decision (ROD) for the Albion Sheridan Township Landfill Superfund site. Upon entry of the Consent Decree (between Remedial Action Defendants, Operation and Maintenance Defendants, and the EPA) under which the ROD for the site will be implemented, it is our understanding that CDC Associates will sign and record the easement. Further, once obtained, a photocopy of the recorded easement will be forwarded to the DEQ by CDC Associates.

Should you require further information or assistance regarding this site, please feel free to contact Mr. Brian von Gunten, Project Manager, Superfund Section, Environmental Response Division, at 517-373-6808, or you may contact me.

Sincerely,

Alan J. Howard, Chief
Environmental Response Division
517-335-1104

Enclosure

cc: Ms. Connie Puchalski, EPA w/enclosure
Mr. Jon Peterson, EPA w/enclosure
Mr. Brian von Gunten, DEQ w/enclosure

**ENVIRONMENTAL PROTECTION EASEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS**

1. This Environmental Protection Easement and Declaration of Restrictive Covenants is made April _____, 1999, by and between **CDC ASSOCIATES, INC.** ("Grantor"), a Michigan corporation, having an address of 402 S. Brown Street, Jackson, Michigan 49203, and **STATE OF MICHIGAN, DEPARTMENT OF ENVIRONMENTAL QUALITY**, and its assigns, ("Grantee"), having an address of 300 South Washington, P.O. Box 30426, Lansing, Michigan 48909-7926.

WITNESSETH:

2. **WHEREAS**, Grantor is the owner of three parcels of land located in the County of Calhoun, State of Michigan, more particularly described on Exhibit A attached hereto and made a part hereof (the "Property"); and

3. **WHEREAS**, the Property is a part of and adjacent to the Albion-Sheridan Township Landfill Superfund Site ("Site"), which the U.S. Environmental Protection Agency ("EPA"), pursuant to Section 105 of the comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9605, placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on October 4, 1989; and

4. **WHEREAS**, in a Record of Decision dated March 28, 1995 (the "ROD"), the EPA Region 5 Regional Administrator selected a "remedial action" for the Site, which provides, in part, for the following actions:

- a. Removal and off-site treatment and disposal of drums containing hazardous wastes;
- b. Construction of a solid waste landfill cap consisting of a flexible membrane liner;
- c. Installation of a passive landfill gas collection system;
- d. Long term monitoring to ensure that the remedy is effectively lowering hazardous substances in the groundwater;
- e. Institutional controls to limit land and groundwater use on-site and groundwater on adjacent property, installation of perimeter fence, and advisories to property owners as required by EPA; and
- f. A contingent remedy of in situ oxidation in the event groundwater contaminant levels are not timely and/or sufficiently lowered as determined by EPA; and

5. **WHEREAS**, the remedial action has not been fully implemented at the Site; and

6. **WHEREAS**, the parties hereto have agreed pursuant to terms of a Consent Decree: 1) to grant a permanent right of access over the Property for purposes of implementing, facilitating and monitoring the remedial action; and 2) to impose on the Property use restrictions as covenants that will run with the land for the purpose of protecting human health and the environment; and

7. **WHEREAS**, Grantor wishes to cooperate fully in the implementation of all response actions at the Site;

NOW, THEREFORE:

8. **Grant:** Grantor, on behalf of itself, its successors and assigns, (collectively the "Grantor") in consideration of the terms of the Consent Decree in the case of United States v. City of Albion, Michigan et al., Case No. 1:97-CV-1037 (W.D. Mich.), does hereby covenant and declare that the Property shall be subject to the restrictions on use set forth below, and does give, grant and convey to the Grantee, and its successors and assigns, (but without any warranties of title except the warranty that Grantor has not taken any action to impair its title other than as provided in this easement and in the Consent Decree referred to above), 1) the perpetual right to enforce said use restrictions, and 2) an environmental protection easement of the nature and character, and for the purposes hereinafter set forth, with respect to the Property.

9. **Purpose:** It is the purpose of this instrument to convey to the Grantee real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to contaminants.

10. **Restrictions On Use:** The following covenants, conditions, and restrictions apply to the use of the Property, run with the land and are binding on the Grantor:

- a. The Grantor shall not itself make, nor may it authorize, any consumptive or other use of the groundwater underlying the Property that could cause exposure of humans or animals to the groundwater underlying the Property, without the consent of the Grantee;
- b. As to the portions of the Property that are covered by the Landfill Cap (as identified in the Consent Decree appendices), Grantor shall not itself, nor may it authorize, any residential, commercial, or agricultural use, including, but not limited to, on-site excavation, landfilling, mining, invasive construction, drilling, and installation of drinking water production wells, except as approved by Grantee;
- c. The Grantor shall not itself, nor may it authorize, any tampering with, development on, or removal of, the containment or monitoring systems that remain on the Property as a result of the implementation of any response action by the EPA, or any party acting as representative for EPA, and which is selected or undertaken by EPA pursuant to Section 104 of CERCLA; and
- d. The Grantor shall not itself, nor may it authorize, any use of, or activity at, the Property that may interfere with, damage, or otherwise impair the effectiveness of any response action (or component thereof) selected and/or undertaken by EPA, or any party acting as representative for EPA, pursuant to Section 104 of CERCLA, except with written approval of EPA, and consistent with all statutory and regulatory requirements.

11. **Modification of Restrictions:** The above restrictions may be modified, or terminated in whole or in part, in writing, by the mutual agreement of the Grantor and the Grantee. If requested by the Grantor or Grantee, such writing will be executed by the parties in recordable form.

12. **Environmental Protection Easement:** Grantor hereby grants to the Grantee an irrevocable, permanent and continuing right of access at all reasonable times to the Property for purposes of:

- a. Implementing the response actions in the ROD, including but not limited to response actions specified in Paragraph 4 herein;
- b. Verifying any data or information submitted to EPA.
- c. Verifying that no action is being taken on the Property in violation of the terms of this

instrument or of any federal or state environmental laws or regulations;

- d. Monitoring response actions on the Site and conducting investigations relating to contamination on or near the Site, including, without limitation, sampling of air, water, sediments, soils, and specifically, without limitation, obtaining split or duplicate samples;
- e. Conducting periodic reviews of the remedial action, including but not limited to, reviews required by applicable statutes and/or regulations; and
- f. Implementing additional or new response actions if the Grantee, in its sole discretion, determines i) that such actions are necessary to protect the environment because either the original remedial action has proven to be ineffective or because new technology has been developed which will accomplish the purposes of the remedial action in a significantly more efficient or cost effective manner; and ii) that the additional or new response actions will not impose any significantly greater burden on the Property or unduly interfere with the then existing uses of the Property.

13. **Reserved Rights of Grantor:** Grantor hereby reserves unto itself, its successors, and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, rights and easements granted herein.

14. **Other Rights of EPA:** Nothing in this document shall limit or otherwise affect EPA's rights of entry and access or EPA's authority to take response actions under CERCLA, the NCP, or other federal law.

15. **No Public Access and Use:** No right of access or use by the general public to any portion of the Property is conveyed by this instrument. Access to the Site shall be controlled at all times by means of a perimeter fence installed and maintained by persons or entities other than Grantor.

16. **Notice Requirement:** Grantor agrees to include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

Notice: the interest conveyed hereby is subject to an environmental protection easement and declaration of restrictive covenants, dated April __, 1999, in Liber __, Page __, in favor of, and enforceable by, The United States of America. *[insert appropriate date and numbers in the instrument]*

Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor must provide Grantee with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

17. **Administrative Jurisdiction:** The federal agency having administrative jurisdiction over the interests acquired by the United States by this instrument is the EPA.

18. **Enforcement:** The Grantee shall be entitled to enforce the terms of this instrument by resort to specific performance or legal process. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. Enforcement of the terms of this instrument shall be at the discretion of the Grantee, and any forbearance, delay or omission to exercise its rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term, or of any of the rights of the Grantee under this instrument.

19. **Damages:** Grantee shall be entitled to recover damages for violations of the terms of this

instrument, or for any injury to the remedial action, to the public or to the environment protected by this instrument.

20. **Waiver of Certain Defenses:** Grantor hereby waives any defense of laches, estoppel, or prescription as to claims for violations of the terms of this instrument brought by the Grantee and its assigns.

21. **Covenants:** Grantor hereby covenants to and with the Grantee and its assigns, that, based upon the receipt of title insurance policies (Ticor Title Insurance Company, policy number 23510809700005834, and First American Title Insurance Company, policy number OP 5702195), it is of the opinion that: 1) the Grantor is lawfully seized in fee simple of the Property, and 2) that the Grantor has a good and lawful right and power to sell and convey it or any interest therein.

22. **Notices:** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first-class mail, postage prepaid, addressed to the Grantor and Grantee at the addresses stated above.

23. **General Provisions:**

a. **Controlling Law:** The interpretation and performance of this instrument shall be governed by the laws of the United States or, if there are no applicable federal laws, by the law of the State of Michigan.

b. **Liberal Construction:** Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to effect the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

c. **Severability:** If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

d. **Entire Agreement:** This instrument sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.

e. **No Forfeiture:** Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

f. **Joint Obligation:** If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

g. **Successors:** The covenants, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The term "Grantor," wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns. The term "Grantee," wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantee" and their personal representatives, heirs, successors, and assigns. The rights of the Grantee and Grantor under this instrument are freely assignable, subject to the notice provisions hereof.

h. Termination of Rights and Obligations: A party's rights and obligations under this instrument terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

i. Captions: The captions in this instrument have been inserted solely for convenience of reference and are not part of this instrument and shall have no effect upon construction or interpretation.

TO HAVE AND TO HOLD unto the Grantee and its assigns forever.

IN WITNESS WHEREOF, Grantor has caused this Agreement to be signed in its name.

Executed April _____, 1999.

WITNESSES

CDC ASSOCIATES, INC.

By _____
Terry J. Klaasen, President

**STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY**

By Alan J. Howard
Alan J. Howard, Chief
Environmental Response Division

**STATE OF MICHIGAN)
COUNTY OF JACKSON)**

On April ____, 1999, before me, a Notary Public in and for the State of Michigan, personally appeared TERRY J. KLAASEN, known to be the President of CDC Associates, Inc., the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument.

Witness my hand and official seal hereto affixed the day and year written above.

Notary Public, Jackson County,
State of Michigan
My commission expires: _____

**STATE OF MICHIGAN)
COUNTY OF INGHAM)**

On April ____, 1999, before me, a Notary Public in and for the State of Michigan, personally appeared ALAN J. HOWARD known to be the Chief, Environmental Response Division of the Grantee, that

executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said Grantee, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument.

Witness my hand and official seal hereto affixed the day and year written above.

Notary Public, Ingham County,
State of Michigan
My commission expires: _____

EXHIBIT A

Parcel 1:

Sheridan Township, Section 36, Town 2 South , Range 4 West, Supervisors Plat - the South 1287 Feet of Lot 26.

Property Tax Identification Number: 1301936203300

Parcel 2:

Commencing at the Southwest Corner of Lot 28 of Supervisors Plat, Thence North 250 Feet along the West Line of Lot 28; Thence East 300 Feet; Thence South to the South Line of Lot 28; Thence Westerly along South Line of Lot 28 to Point of Beginning.

Property Tax Identification Number: 1301936204510

Parcel 3:

Commencing at the Southeast Corner of Lot 28, Supervisors Plat; Thence Westerly along the South Line of Said Lot, 389.3 Feet; Thence North 350 Feet; Thence East to a Point 200 Feet West of the East Lot Line; Thence North to a Point being 200 Feet West and 720 Feet North of the Point of Beginning; Thence East 200 Feet; Thence South to the Point of Beginning.

Property Tax Identification Number: 1301036204520